

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: *Unbundled Access to Network Elements; Review of the Section 251
Unbundling Obligations of Incumbent Local Exchange Carriers, WC
Docket No. 04-313, CC Docket No. 01-338***

Over the summer, members of the investment community wrote to you expressing their concern over policies of the Federal Communications Commission that seemed directly at odds with your professed commitment to facilities-based competition.^{1/} Since that time, the profound disconnect between the pro-competition statements of the Commission, and its decidedly anticompetitive policies, continues to widen. We write now because we understand that the Commission is about to undertake yet another action that will undermine facilities-based competition by extending unbundling relief to so-called fiber-to-the-curb arrangements and will do so in a way that will preclude access to loops used to serve business customers.

We are private equity firms that have made substantial investments in facilities-based competitive carriers. The companies we represent, such as Cavalier Telephone, Cbeyond Communications, City Signal Communications, DSL.net, FDN Communications, Grande Communications, Looking Glass Networks, NuVox Communications, PAETEC Communications, and Xspedius Communications, provide service to business customers, in many cases small to medium sized businesses, throughout the country. Our portfolio companies have led the way in providing broadband solutions to these businesses. They have done so by using the capital we have invested to purchase state-of-the-art equipment that is combined with the incumbent carriers' local loop infrastructure – an infrastructure that is both uneconomical and unwise to duplicate. Ironically, the leadership these companies have shown in bringing

^{1/} See, Letter from Peter H.O. Claudy, M/C Venture Partners, James Flemming, Columbia Capital, James N. Perry, Jr., Madison Dearborn Partners, LLC, Rand G. Lewis, Centennial Ventures and James H. Greene, Jr., Kohlberg Kravis Roberts & Co., to Michael K. Powell, Chairman of the FCC, CC Docket Nos. 01-338, 96-98, and 98-147 (July 22, 2004) (“July 22nd Investor Letter”); Letter from William Laverack, Jr., Whitney & Co., LLC, Michael Huber, Quadrangle Group, LLC, Anthony J. Bolland, Boston Ventures, to Michael K. Powell, Chairman of the FCC, filed in CC Docket Nos., 01-338, 96-98, 98-147 (July 28, 2004). Letter from G. Jackson Tankersly, Jr., Meritage Private Equity Funds to Michael K. Powell, Chairman of the FCC, filed in CC Docket Nos. 01-338, 96-98, 98-147 (August 5, 2004).

broadband to small business is threatened by policies that purport to encourage broadband deployment to residential consumers.

You and other members of the Commission have repeatedly voiced support for facilities-based intramodal competition, and in particular, the benefits such competition brings to the nation's small businesses. Just two months ago, you reiterated your consistent support for facilities-based competition, even noting by name some of our portfolio companies. You stated: "I remain steadfastly committed to providing the key network elements to these facilities competitors...without which they would be impaired." Your fellow commissioners echoed your commitment to maintaining access to key facilities, such as DS-1 loops and transport, as the Commission finalizes unbundling rules in the coming months.^{2/}

Despite these assurances, the Commission has embarked on a series of policies that directly undermine the ability of facilities-based carriers to obtain access to last-mile facilities in order to provide service to business customers. These policies have the stated goal of encouraging deployment of broadband services to the mass market by relieving incumbent carriers of unbundling obligations for fiber and new packet-based technologies. Initially, in the *Triennial Review Order*, the Commission was careful to ensure that its policies of encouraging mass market broadband services would not undercut competitive carriers' access to high capacity loops to serve business or enterprise customers.

The distinction between mass market and enterprise customers is quickly eroding to the detriment of facilities-based carriers. The Commission started down this road with its August 9, 2004 order extending fiber-to-the-home relief to fiber to "primarily residential" multi-unit premises. The Commission fully realized that such buildings often include business locations, yet refused to limit its relief only to residential customers located in such buildings. The result of the Commission's action potentially is to wall off business customers located in such "primarily residential" buildings.

We understand that the Commission is now poised to consider further unbundling relief for incumbent carriers that deploy or, in fact have already deployed, fiber-to-the-curb technology. We further understand, and this is the issue of primary concern, that the Commission may also revise its network modification rules in a way that will preclude facilities-based carriers from accessing enterprise loops in such arrangements. It thus appears that the Commission is once again embarking on rules designed to promote *mass market* broadband deployment, yet seems to be going out of its way to undercut facilities-based competition in the enterprise market. The Commission's continuing extension of

^{2/} See, Statement of Commissioner Kathleen Q. Abernathy, Order and Notice of Rulemaking, CC Docket Nos. 04-313, 01-338 (Rel. August 20, 2004) (Interim Order) (noting that a clear majority of the Commission has advocated continued unbundling of DS-1 facilities in most circumstances); Dissenting Statement of Commissioner Michael J. Copps (noting particularly the importance of continued unbundling of enterprise facilities to serve small business customers).

mass market unbundling relief into the enterprise market threatens the ability of our companies to fairly compete against the incumbent carriers.

We are simply at a loss to understand the Commission's actions. We appreciate your commitment to adopt quickly new unbundling rules that will continue to make enterprise loops available. Those rules, however, will be meaningless if, at the same time, the Commission adopts rules that enable incumbent carriers to prevent competitive carriers from accessing those facilities.

If the Commission intends to move forward with fiber-to-the-curb relief, we urge the Commission to reaffirm the distinction between mass market and enterprise loops and to state unequivocally that carriers will have access to the incumbent carriers' local loop infrastructure to serve enterprise customers, especially small business customers, regardless of the nature of those facilities.

Sincerely,

/s/
James Wade
M/C Venture Partners

/s/
Michael Huber
Quadrangle Group

/s/
James N. Perry, Jr.
Madison Dearborn Partners, L.L.C.

/s/
Rand G. Lewis
Centennial Ventures

/s/
James H. Greene, Jr.
Kohlberg Kravis Roberts & Co.

/s/
William Laverack, Jr.
Whitney & Co. LLC

/s/
G. Jackson Tankersly, Jr.
Meritage Private Equity Funds

/s/
James Fleming
John Siegel
Columbia Capital